

REMARKS

Claims 1-3, 5-7, 9-12, 14-16, and 18 are pending in this application.

Applicant has amended claims 1, 6, 10, and 15, and has canceled claims 4, 8, 13, and 17. These changes do not introduce any new matter.

Applicant respectfully requests reconsideration of the rejection of claims 1-18 under 35 U.S.C. § 102(e) as being anticipated by *Lethin et al.* (U.S. Patent No. US 6,463,582 B1). As will be explained in more detail below, the *Lethin et al.* reference does not disclose each and every feature of the subject matter defined in independent claims 1, 6, 10, and 15, as amended herein.

The *Lethin et al.* reference discloses an optimizing object code translation system and method that perform dynamic compilation and translation of a target object code on a source operating system while performing optimization. In support of the anticipation rejection, the Examiner points to column 5, lines 21-43, of the *Lethin et al.* reference as disclosing that the executing of the object code includes identifying dynamic changes in flow to enable additional portions of the object code to be obtained and executed. Applicant respectfully traverses this characterization of the *Lethin et al.* reference relative to the claimed subject matter.

The *Lethin et al.* reference states “[w]hen the number of times some branch is executed exceeds a threshold number, the destination of that branch becomes a seed for compilation. The seed is a starting point for a parse of a portion of the K instructions to be compiled as a unit. The unit is called a segment.” Column 5, lines 23-27. The cited portion of the *Lethin et al.* reference relates to a branch from the program. As stated in Applicant’s specification, a branch from a program is a static change in flow (see, e.g., Applicant’s specification at page 6, lines 5-7). In contrast, the claimed subject matter involves identifying dynamic changes in flow, e.g., a jump instruction. Moreover, the *Lethin et al.* system takes

action after the fact based on profiling information gathered by the interpreter (see column 5, lines 21-23. In contrast, the claimed subject matter identifies dynamic changes in flow during the executing of the portion of the binary code, and immediately proceeds to obtain and execute the additional portions of the binary code.

To clarify the above-discussed distinction between the *Lethin et al.* reference and the claimed subject matter, Applicant has amended each of claims 1, 6, 10, and 15 to specify that the executing of the portion of the binary program includes “identifying dynamic changes in flow *defined by a jump instruction* to enable additional portions of the binary code to be obtained and executed.” Thus, for at least the foregoing reasons, the *Lethin et al.* reference does not disclose each and every feature of claims 1, 6, 10, and 15, as amended herein.

Accordingly, independent claims 1, 6, 10, and 15 are patentable under 35 U.S.C. § 102(e) over *Lethin et al.* Claims 2, 3, and 5, each of which ultimately depends from claim 1, claims 7 and 9, each of which depends from claims 6, claims 11, 12, and 14, each of which ultimately depends from claim 10, and claims 16 and 18, each of which depends from claim 15, are likewise patentable under 35 U.S.C. § 102(e) over *Lethin et al.* for at least the same reasons set forth above regarding the applicable independent claim.

Applicant respectfully requests reconsideration of the rejection of claims 1-18 under 35 U.S.C. § 102(e) as being anticipated by *Hicks* (U.S. Patent No. US 7,100,154 B2). As will be explained in more detail below, the *Hicks* reference does not disclose each and every feature of the subject matter defined in independent claims 1, 6, 10, and 15, as amended herein.

The claimed subject matter defined in independent claims 1, 6, 10, and 15 involves a method for the dynamic *recompilation* of a program, as opposed to the initial compilation of a program. The starting point for the method is the identifying of binary code for a program. In contrast, the starting point for the initial compilation of a program is typically the original

source code (see Figure 1 of the subject application). To clarify this distinction, Applicant has amended each of claims 1, 6, 10, and 15 to specify “identifying binary code for a program that has already been compiled.”

The *Hicks* reference discloses a dynamic compiler apparatus that, as understood by Applicant, involves the initial compilation of a program. As such, the *Hicks* reference does not disclose a method for *recompilation* of a program as in the claimed subject matter. Furthermore, the *Hicks* reference discloses the use of persistent execution statistics so that the dynamic compiler can determine which portions of the program should be immediately compiled. The use of such execution statistics occurs after the fact, i.e., after the program has been executed, and does not involve identifying dynamic changes in flow, e.g., a jump instruction. As such, the *Hicks* reference does not disclose “identifying dynamic changes in flow *defined by a jump instruction* to enable additional portions of the binary code to be obtained and executed” as in the claimed subject matter. Thus, for at least the foregoing reasons, the *Hicks* reference does not disclose each and every feature of claims 1, 6, 10, and 15, as amended herein.

Accordingly, independent claims 1, 6, 10, and 15 are patentable under 35 U.S.C. § 102(e) over *Hicks*. Claims 2, 3, and 5, each of which ultimately depends from claim 1, claims 7 and 9, each of which depends from claims 6, claims 11, 12, and 14, each of which ultimately depends from claim 10, and claims 16 and 18, each of which depends from claim 15, are likewise patentable under 35 U.S.C. § 102(e) over *Hicks* for at least the same reasons set forth above regarding the applicable independent claim.

In view of the foregoing, Applicant respectfully requests reconsideration and reexamination of claims 1-3, 5-7, 9-12, 14-16, and 18, as amended herein, and submits that these claims are in condition for allowance. Accordingly, a notice of allowance is respectfully requested. In the event a telephone conversation would expedite the prosecution

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of this application, the Examiner may reach the undersigned at (408) 749-6902. If any additional fees are due in connection with the filing of this paper, then the Commissioner is authorized to charge such fees to Deposit Account No. 50-0805 (Order No. SUNMP318).

Respectfully submitted,
MARTINE PENILLA & GENCARELLA, L.L.P.

A handwritten signature in black ink, appearing to read "P. B. Martine", with a long horizontal flourish extending to the right.

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